by will dispose of his "forty-ninth street house," [3] it is clear that he has made an exact written expression of the conception which he entertained, though it is in a unique language which the court may translate if the spirit of the statute of wills permits the use of language that does not convey its meaning to persons familiar with the national speech, which has been thus perverted.[4] On the other hand, when one who owns and intends to devise the southeast quarter of a certain section of land describes it as the northeast quarter of that section, the words themselves bear almost conclusive evidence that the testator was using, not his own peculiar language, but rather the language of a particular survey of that section and, by inadvertence, has failed to choose the particular words of that language which would give a written expression of his intent. The element of mistake has entered and defeated the testator's purpose to comply with the statute of wills.

It has been suggested, however, that the court may strike out the "false" words of description and thus produce an equivocal description which may then be applied to the land which the testator intended to devise.[5] While it may be open to grave doubt whether or not words which apply equally well to more than one thing may be said to designate any particular one of them,[6] the conclusive argument against this contention is that courts cannot, with propriety, strike from a will words inserted by mistake. If the words are actually stricken from the instrument, the altered document is not the writing which the testator signed and the witnesses attested.[7] If, on the other hand, the "striking out" is purely fictitious, it is but a circuitous method of "interpretation."

Because the process of interpretation cannot be used to correct mistakes in wills, it does not follow that our courts are helpless to relieve the situation. It is submitted, however, that equity alone can adequately deal with the matter. How far the chancellor would go in declaring that the legal titles which have accrued because of a testator's inadvertence shall be held in constructive trust for the intended beneficiaries, is problematical. But a due regard for the rights of third persons who, before any question of construction has been raised, have reasonably acted in reliance on the primary meaning of the words of a will,[8] demands that the problem be solved by a court which can both protect such persons, and, as far as possible, effectuate the desires of testators.

TIME WHEN AN INHERITANCE TAX ON PERSONALTY ACCRUES. — Inheritance tax statutes ordinarily provide for a tax when property passes by will or by intestate laws to any person except a father, mother, brother, etc. The tax is imposed not on the property transferred, but solely on the

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[3] Peters *v.* Porter, 60 How. Pr. (N. Y.) 422.

[4] *Cf.* Wigram, Interpretation of Wills, 10.

[5] Patch *v.* White, *supra;* Whitehouse *v.* Whitehouse, *supra.*

[6] See Mr. Justice Holmes in 12 HARV. L. REV. 417.

[7] See Rhodes *v.* Rhodes, 7 App. Cas. 192, 198. The English Court of Probate does, on proffer for probate, strike out such words, unless the will was read over to the testator before execution. It is believed that this anomalous doctrine has never been tested in a court of appeal. In the Goods of Duane, 2 Sw. & Tr. 590; In the Goods of Boehm, [1891] P. 247.

[8] In Patch *v.* White, *supra,* the testator died in 1832 and the first argument of the ejectment suit brought against a third person was not heard by the Supreme Court until 1885.

transfer or passing of the property.[1] When does personal property pass within the meaning of the statute? In a recent case in New York it was decided that on the death of a non-resident intestate his estate *eo instanti* passes to his next of kin and that the state's right to an inheritance tax on the shares of all non-exempt distributees vests at once, and cannot be defeated by the administrator's election to apply the New York assets to the payment of the claims of an exempt distributee. *Matter of Ramsdill*, 190 N. Y. 492. In an earlier case in the same jurisdiction it was held that where a testator domiciled in England left personalty in that country and also in New York, his executor, by paying the non-exempt legatees out of the English assets, could escape payment of the New York inheritance tax.[2] It is argued that the tax is on the succession, and since the executor has chosen to apply assets in another jurisdiction to the payment of the legacies of non-exempt legatees, there has been no succession by such legatees to any property in New York. This is only another way of saying that on the death of the testator no property passes to the legatees. The state's right to the tax depends not upon a formal change of title but upon the passing of the instant right to a beneficial interest.[3] The distinction taken by the New York court that such a beneficial interest passes to the next of kin on the death of an intestate, but does not pass to the legatee on the death of a testator, seems unfounded in reason. For neither an executor nor an administrator takes any beneficial interest in the decedent's property. And on the death of the testator or intestate both legatees [4] and next of kin [5] get an immediate interest in the personal estate analogous to that of a *cestui que trust*. Accordingly the next of kin at the time of the intestate's death and not those at the time of distribution take the personal estate.[6] The share of a distributee who dies before distribution goes to his personal representative.[7] And income derived from the estate after the decedent's death is not liable to the tax.[8] It follows that within the meaning of the statute property passes both under a will and under intestate laws on the death of the testator or intestate, and at that time the state's right to the inheritance tax accrues.[9] Once the state's right to the tax has vested, neither the executor [10] nor the administrator should be allowed to defeat it. It cannot even be surrendered by legislative act.[11] Accordingly, if a testator leaves property to an illegitimate son who is subject to an inheritance tax, the administrator must pay the tax, though the legislature passes an act on the day after the testator's death legitimating the son.[12]

By the weight of authority no inheritance tax can be collected when a legatee renounces his legacy.[13] This result can be reached only by a resort

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1 Magoun *v.* I. T. & S. Bank, 170 U. S. 283; Plummer *v.* Coler, 178 U. S. 115.

2 Matter of James, 144 N. Y. 6. See also Matter of McEwan, 51 N. Y. Misc. 455.

3 Kingsbury *v.* Chapin, 82 N. E 700 (Mass.).

4 Hooper *v.* Bradford, 178 Mass. 95; Mechanics' Savings Bank *v.* Waite, 150 Mass. 234.

5 Perryman *v.* Greer, 39 Ala. 133.

6 Thompson *v.* Thomas, 30 Miss. 152; Moore *v.* Gordon, 24 Ia. 158.

7 Rose *v.* Clark, 8 Paige (N. Y.) 574.

8 Williamson's Estate, 153 Pa. St. 508; Matter of Will of Vassar, 127 N. Y. 1.

9 Matter of Westburn, 152 N. Y. 93; Lines's Estate, 155 Pa. St. 378; Hooper *v.* Bradford, *supra*.

10 Kingsbury *v.* Chapin, *supra*. See also Greves *v.* Shaw, 173 Mass. 205.

11 Trippett *v.* State, 149 Cal. 521.

12 Galbraith *v.* Com., 14 Pa. St. 258; Com. *v.* Stump, 53 Pa. St. 132.

13 *In re* Estate of Stone, 132 Ia. 136; Matter of Wolfe, 89 N. Y. App. Div. 349. *Contra*, Frank's Estate, 9 Pa. Co. Ct. 662.

to the fiction of relation. Although a beneficial interest vests in the legatee on the testator's death, he has a right to reject it.[14] When once he exercises this right his share falls back into the residuary, and the residuary legatees by relation take an interest in it from the death of the testator. The transfer, then, has been in effect directly to the residuary legatees and therefore if they are non-taxable the state has no right to collect a tax.

THE NATURE OF THE JURISDICTION OF UNITED STATES COURTS ESTABLISHED IN FOREIGN COUNTRIES — The extent to which treaties allow the United States to exercise extraterritorial jurisdiction is to enforce duties owed by its own citizens. Their rights are governed and administered by the law and the local courts, whether native or consular, of the person who wrongs them.[1] The nature of the jurisdiction so exercised must be determined by the terms of the treaty giving the power, and the act creating the tribunal. An interesting example of such an act is that of June 30, 1906, establishing the United States Court for China and giving it jurisdiction of the more important civil and criminal cases against American citizens in China, formerly heard before the American consular courts there.[2] The act greatly restricts the jurisdiction of the consuls and allows appeals from their judgments to the new court in all cases. The Circuit Court of Appeals for the Ninth Circuit has recently held that this court has jurisdiction of an offense committed by an American in China, where the act constituted a crime by the "common law," — meaning the common law of the colonies at the time of the separation from Great Britain. *Biddle* v. *United States*, 156 Fed. 759. Of course, this does not imply that the court is attempting to fasten the English common law on the Chinese Empire, but simply denotes that the United States has authority to apply this somewhat abstract system of law in the exercise of its extraterritorial privileges in China. The sanction of such extraterritorial jurisdiction is the consent of the Emperor of China, expressed in the treaties with the United States, to the effect that citizens of the United States sued or charged with crime in China shall be tried and punished "according to the laws of the United States."[3] And, in defining these laws for the exercise of the jurisdiction thus granted, Congress enacted in the Act of 1906 as well as in the previous acts which concerned the consular courts, that the "common law" shall be applied when existing laws are deficient to give jurisdiction.[4] The act rightly and clearly recognizes, however, that the jurisdiction of the United States is dependent on and limited by the terms of the treaties with China. The jurisdiction of the United States in China is binding simply because of the presence of American citizens in the territory of an emperor who, by force of his personal jurisdiction over them, has placed them under the jurisdiction of their sovereign. And clearly it is not the delegation of a qualified territorial jurisdiction, but the grant of personal jurisdiction,[5] as it does not extend to persons who are not American citizens.[6] But the consular courts and the Court for China will entertain suits by foreigners against American citizens in China,[5] and will bind and punish them without

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[14] Watson *v.* Watson, 128 Mass. 152; *In re* Estate of Stone, *supra*.

[1] Piggott, Exterritoriality, 21. [2] 34 Stat. at L. 814.

[3] Treaty with China, June 18, 1858, Art. XI, XXIV, XXVII. See Dainese *v.* Hall, 91 U. S. 13.

[4] 34 Stat. at L. 814, § 4.

[5] 7 Opin. Atty.-Gen. 495. [6] 11 Opin. Atty.-Gen. 474.